

C O P Y

STRUCKMEYER, JENNINGS & STROUSS  
Phoenix, Arizona.

February 1, 1928.

Arizona State Highway Dept.,  
Phoenix, Arizona.

Gentlemen:

Attention: E. M. Whitworth, Supt.,  
Motor Vehicle Division

As requested by you, we hand you herewith our opinion upon the question of whether or not the documents submitted to you by the Hertz Drivurself System comply with the requirements of Section 27, Chapter 3 of the Highway Code requiring owners of motor vehicles engaged in the business of renting motor vehicles without drivers to procure liability insurance insuring the renter of the motor vehicle against liability arising out of his negligence in the operation of such rented vehicle.

The documents delivered to us are two riders or endorsements to the original policy and the rental agreement used by the Hertz Drivurself System. We have not received a copy of the original policy of insurance. The original policy includes the insuring clause. This clause is not in the riders or endorsements, and we are therefore unable to determine whether or not the policy is one of indemnity for liability or insures against liability. The Highway Code requires insurance against liability.

Rider No. 187,187 does not comply with the requirements of Section 27, Chapter 3 of the Highway Code for the following reason: Paragraph 2 of this rider or endorsement provides "It is further understood and agreed that the said policy is not intended to cover and shall not cover liability of a renter or driver arising by reason of accident occurring while automobiles are being used to carry passengers for a consideration, express or implied."

Section 27 requires insurance insuring the renter of the vehicle against the liability arising out of his negligence in the operation of rented vehicles. It further provides that the insurance therein required shall be construed to cover any liability of the renter to any passengers in the vehicle rented, unless the owner shall give the renter a written notice that such policy does not cover such liability. The only liability of the renter arising out of his negligence which is not required to be insured against is that in respect to a passenger when the notice is given. The limitation in the paragraph quoted is valid in so far as it provides that the insurance shall not apply to liability for injury to passengers carried in the rented vehicle, since the rental contract give notice that the policy does not apply to passengers. However, this provision in this endorsement or rider goes further than exempting the insurer from liability for damages resulting from injury to passengers carried in the rented vehicle, it exempts the insurer from any liability whatsoever should the vehicle be used by the renter to carry passengers for a consideration. As an illustration, suppose a person rents a motor vehicle

from the Hertz Drivurself System and uses the vehicle to carry passengers for a consideration. In the operation of the motor vehicle he negligently injures or kills a child or person walking in the street. Under this provision in this endorsement the insurance company would not be liable under the policy. In other words, there is no insurance against the liability of the renter arising out of his negligence in the operation of the motor vehicle under such circumstances. This does not comply with the Highway Code.

Rider or endorsement No. 0101 does not comply with Section 27 Chapter 3, for the following reason; Paragraph III 3 (iii) provides as follows: "3. This policy does not cover; - (b) any liability of the Renter or Driver;--

(iii) In respect of injuries caused in whole or in part by any automobile insured hereunder, while being operated or manipulated by any person in violation of law as to age, or, under the age of sixteen years in any event; in any race, speed test or contest; to propel or tow any trailer or other vehicle used as a trailer; by any person other than the Renter who signed the Rental Agreement, or his employee; in violation of any of the terms of the Rental Agreement under which such automobile is rented; by a Driver or Renter who has given a fictitious name of false address to the Licensee from which such automobile is rented; by any person under the influence of intoxicants or narcotics; for any illegal purpose; outside of the scope of the employment of the Driver if the Driver is an employee of the Renter".

The first provision exempts the insurance company from liability in respect to injuries caused in whole or in part by any automobile insured thereunder while being operated or manipulated by any person in violation of law as to age, or, under the age of sixteen years in any event. Under this provision if the renter of the car is a minor, or if he be of age and employ a minor to drive the car, no liability attaches under the policy. In other words, the owner of the motor vehicle has not procured insurance against the liability of the renter of that motor vehicle arising out of his negligence in the operation thereof. The Highway Code makes no exceptions, other than in respect to passengers, in the requirement that insurance be procured insuring the renter against liability. This provision in this endorsement does not, therefore, comply with the requirements of the Highway Code.

By the next provision the policy does not cover any liability against a renter arising out of his negligent operation of the motor vehicle while engaged in any race, speed test or contest, either upon the highway or otherwise, and regardless of who may be injured. In other words, no insurance is provided against the liability of the renter arising out of his negligent operation of the motor vehicle, if in so operating it he engage in a race, speed test or contest. There is no such exception in the Highway Code.

By the next provision the policy does not cover any liability of the renter arising out of his negligent operation of the rented vehicle to propel or tow any trailer or any other vehicle used as a trailer. In other words, no insurance is provided insuring the liability of a renter arising out of his negligence in the operation of the rented vehicle, should such renter use the vehicle to propel or tow any trailer or other vehicle used as a trailer.

By the next provision the policy does not cover any liability of the renter in respect to injuries caused in whole or in part by any automobile insured thereunder while being operated in violation of any terms of the rental contract under which such automobile is rented. The rental agreement provides that the renter will obey all Federal, State and municipal laws with reference to the operation and use of said vehicle. In a great percentage of cases where liability arises by reason of negligence in the operation of a motor vehicle, the negligence relied upon to fix the liability is a violation of some law. Driving on the wrong side of the road, driving at a high or excessive rate of speed, passing on the wrong side and failing to give signals are all violations of a State or municipal law. Likewise, these acts would constitute negligence in the operation of the vehicle which might give rise to a liability in the case of an accident. Under this provision of the policy, the policy would not cover such liability and there is no insurance insuring the liability of the renter arising out of such negligent acts. The greater percentage of negligent cases arising involve violations of some law. This provision eliminates the very risks that are intended to be covered by the provisions of the Highway Code. The remaining provisions in this section of the policy are of a like character.

Endorsement No. 187, 187 will comply with the Highway Code if the second paragraph thereof is stricken. Endorsement No. 0101 will comply with the Highway Code of paragraph III, 3<sup>d</sup> (iii) is stricken.

As they now stand, these endorsements do not comply with the Highway Code.

We return herewith the papers delivered to us.

Very truly yours,

STRUCKMEYER JENNINGS & STROUSS

By Charles L. Strauss, (signed)

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